

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GRACE BURROWS, et al.,

Case No. C19-1649RSL

Plaintiffs,

**ORDER GRANTING
DEFENDANT'S MOTION
FOR PROTECTIVE ORDER**

3M COMPANY.

Defendant.

This matter comes before the Court on defendant's "Motion for Protective Order to Prevent Discovery by Adult Children Beneficiaries." Dkt. #25. The Court, having reviewed the motion and the record contained herein, finds as follows:

On May 22, 2018, construction worker Walter Burrows was working on the Sound Transit Light Rail System in King County, Washington, when he lost his balance and fell to his death. Dkt. #13 (Am. Compl.) at ¶¶ 7-13. Mr. Burrows was using a 3M Lifeline at the time of his fall. Id. at ¶ 11. On September 13, 2019, his wife Grace Burrows initiated a wrongful death action in King County Superior Court. Dkt. #1-1. Ms. Burrows filed the lawsuit on her own behalf and in her capacity as Personal Representative of the Estate on behalf of the statutory beneficiaries, which include Mr. Burrows' adult children Carrol Dobbins, Jennifer Sipes, and

1 Tina Radovich, and adult stepchildren Randy Morrow and Denise Foy.¹ Am. Compl. at ¶¶ 1, 3.
 2 Defendant removed this matter to federal court based on diversity jurisdiction. 28 U.S.C.
 3 § 1332(a); Dkt. #1. On December 9, 2019, plaintiffs filed an amended complaint. Am. Compl.
 4 Plaintiffs assert claims for products liability, breach of warranty, and breach of implied warranty
 5 of merchantability. *Id.* at ¶¶ 23-45.

6 On June 12, 2020, defendant filed a “Motion for Protective Order to Prevent Discovery
 7 by Adult Children Beneficiaries.” Dkt. #25. Defense counsel asserts that on May 14, 2020,
 8 counsel for the Adult Children Beneficiaries expressed her intent to propound discovery and ask
 9 questions during depositions in this case. See Dkt. #26 (Alcazar Decl.) at ¶ 2. Defendant
 10 opposes discovery by the Adult Children Beneficiaries on the ground that Ms. Burrows, as
 11 personal representative, is the only party authorized to pursue the claims plaintiffs assert. Dkt.
 12 #25 at 4. Defendant therefore moves for a protective order prohibiting counsel for the Adult
 13 Children Beneficiaries from “propound[ing] duplicative discovery and participat[ing] separately
 14 in depositions in this case.” *Id.*

15 Federal Rule of Civil Procedure (“Rule”) 26 governs the permissible scope of discovery
 16 in federal civil litigation. Rule 26(b) sets forth the threshold requirement that information
 17 sought to be discovered must appear “relevant to any party’s claim or defense and proportional
 18 to the needs of the case[.]” Fed. R. Civ. P. 26(b). Rule 26(c) provides the Court with authority
 19 to issue, for good cause, a protective order to prevent “annoyance, embarrassment, oppression,
 20 or undue burden or expense” in connection with documents sought in discovery. Fed. R. Civ. P.
 21 26(c). This includes “forbidding inquiry into certain matters, or limiting the scope of disclosure
 22 or discovery to certain matters[.]” *Id.* “Rule 26(c) confers broad discretion on the trial court to
 23 decide when a protective order is appropriate and what degree of protection is required.” Seattle
 24 Times Co. v. Rhinehart, 467 U.S. 20, 36 (1984). To establish good cause under Rule 26(c), the
 25

26 ¹ Plaintiffs are represented in this action by separate counsel. Ms. Dobbins, Ms. Sipes, and Ms.
 27 Radovich (collectively, the “Adult Children Beneficiaries”) are represented by Debora Dunlap. Ms.
 28 Burrows, and the stepchildren of Mr. Burrows (Mr. Morrow and Ms. Foy) are represented by James
 Macpherson, Joseph Kopta, and Timothy Acker.

1 movant must establish ““that specific prejudice or harm will result’ if the protective order is not
 2 granted.” In re Roman Catholic Archbishop of Portland in Or., 661 F.3d 417, 424 (9th Cir.
 3 2011) (quoting Foltz v. State Farm Mut. Ins. Co., 331 F.3d 1122, 1130 (9th Cir. 2003)).

4 Washington’s wrongful death statute provides that “[w]hen the death of a person is
 5 caused by the wrongful act . . . of another person, his or her personal representative may
 6 maintain an action against the person causing the death for the economic and noneconomic
 7 damages sustained by the beneficiaries listed in RCW 4.20.020[.]” RCW 4.20.010(1). The
 8 Washington Supreme Court has made clear that wrongful death actions “must be brought by the
 9 personal representative of decedent’s estate and *cannot* be maintained by the decedent’s children
 10 or other survivors.” Beal for Martinez v. City of Seattle, 134 Wn.2d 769, 776 (1998) (emphasis
 11 added); see also Atchison v. Great W. Malting Co., 161 Wn.2d 372, 376 (2007) (“In
 12 Washington, wrongful death actions are strictly creatures of statute . . . [and] Washington courts
 13 have consistently read this statute to mean that *only* a personal representative may bring an
 14 action for wrongful death.”). “The personal representative, not the minor [or statutory
 15 beneficiaries], possesses the claim.” Huntington v. Samaritan Hosp., 35 Wn. App. 357, 360-61
 16 (1983) (citing Wood v. Dunlop, 83 Wn.2d 719, 723 (1974)).

17 The Adult Children Beneficiaries’ arguments to the contrary are generally not well taken.
 18 See Dkt. #28. Counsel for the Adult Children Beneficiaries expresses concern that her clients’
 19 interests may diverge from those of Ms. Burrows and her adult children. Dkt. #29 (Dunlap
 20 Decl.) at ¶ 7. However, it is well established that the personal representative must bring the
 21 claim on behalf of, and represent the interests of the statutory beneficiaries. Indeed, the personal
 22 representative serves as a fiduciary to the beneficiaries of the wrongful death action. Cf. In re
 23 Estate of Larson, 103 Wn.2d 517, 521 (1986) (“The personal representative stands in a fiduciary
 24 relationship to those beneficially interested in the estate.”).

25 Defendant has established that the statutory beneficiaries do not possess independent
 26 claims in this wrongful death action. Accordingly, it is improper for counsel for the Adult
 27 Children Beneficiaries to propound independent discovery. Defendant has shown that specific
 28 harm and/or prejudice will result if it is required to defend against unnecessary, duplicative
 ORDER GRANTING DEFENDANT’S
 MOTION FOR PROTECTIVE ORDER - 3

1 discovery by counsel for the Adult Children Beneficiaries, and the Court finds defendant has
2 met its burden to establish “good cause” warranting a protective order under Rule 26(c). Fed. R.
3 Civ. P. 26(c); Foltz, 331 F.3d at 1130.

4 For all the foregoing reasons, defendant’s “Motion for Protective Order” (Dkt. #25) is
5 GRANTED. IT IS HEREBY ORDERED that only one attorney from plaintiffs’ side may ask
6 questions at depositions and/or propound discovery.

7

8 DATED this 29th day of October, 2020.

9
10 

11 Robert S. Lasnik
12 United States District Judge

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28